

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BENJAMIN S. GARCIA,

CV F 02-5878 AWI DLB HC

Petitioner,

ORDER GRANTING RESPONDENT'S
REQUEST TO WITHDRAW MOTION FOR
RECONSIDERATION AND REFERRING
MATTER BACK TO MAGISTRATE JUDGE
FOR RECOMMENDATION ON MERITS OF
PETITION

v.

JIM HAMLET,

Respondent.

[Docs. 55, 67, 70]

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On August 10, 2005, Respondent filed a motion for reconsideration of the Court's prior order denying Respondent's motion to dismiss the petition on the ground that it was filed outside the one-year statute of limitations set forth in 28 U.S.C. § 2244(d).¹ On September 8, 2005, Petitioner filed an opposition to the motion for reconsideration. On September 19, 2005, Respondent filed a reply to Petitioner's opposition to the motion for reconsideration.

On October 7, 2005, Petitioner submitted a prison mail log in support of his request for equitable tolling of the limitations period. On October 21, 2005, Respondent requested the Court stay the motion for reconsideration until counsel could complete his investigation of the belatedly-presented mail log. On November 3, 2005, Petitioner filed a declaration in which he gave his

¹ On August 9, 2005, Respondent submitted an answer to the petition. Petitioner filed a traverse on September 22, 2005.

1 explanation/interpretation of certain mail log entries that are potentially relevant to his equitable
2 tolling claim. On November 18, 2005, Respondent submitted a request to withdraw the
3 application for stay and motion for reconsideration. Counsel for Respondent indicates that he has
4 completed his investigation of the belatedly-presented mail log and indicates that the interests of
5 justice are no longer best served by reconsideration of Respondent's motion to dismiss.

6 Based on the foregoing, it is HEREBY ORDERED that:

- 7 1. Respondent's request to withdraw the motion for reconsideration is GRANTED;
8 and
9 2. The matter is referred back to the Magistrate Judge for a recommendation on the
10 merits of the petition.

11 IT IS SO ORDERED.

12 Dated: December 5, 2005
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/s/ Anthony W. Ishii
UNITED STATES DISTRICT JUDGE